

**IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION**

BEYOND SYSTEMS, INC.)
Plaintiff)
v.) Case No. PJM 08 cv 0921
WORLD AVENUE USA, LLC, et al.)
Defendants.)
_____)

**WORLD AVENUE USA, LLC'S MOTION FOR LEAVE TO FILE SURREPLY TO
PLAINTIFF'S REPLY IN SUPPORT OF ITS
MOTION TO CORRECT MISNOMER AT DE 459**

Pursuant to Local Rule 105.2(a), WORLD AVENUE USA, LLC (“WAUSA”), by and through undersigned counsel, hereby moves for leave to file a brief surreply in response to the Reply filed on November 22, 2010 by Plaintiff, Beyond Systems, Inc. (“BSI”) in support of its Motion to Correct Misnomer. [DE 526].

I. BACKGROUND

Plaintiff filed its Motion to Correct Misnomer on October 22, 2010. DE 459. Although parties have been litigating more than two and a half years and WAUSA on multiple occasions pointed out to BSI that WAUSA is not the successor in interest to any company and that WAUSA was formed for the first time in September 2006, BSI alleges that it intended to name TheUseful, LLC, when it named WAUSA. Accordingly, on November 12, 2010, WAUSA filed its Opposition to BSI's DE 506. In its Reply filed on November 22, 2010, Plaintiff attached an inadvertently disclosed communication between WAUSA's counsel and alleged that "Plaintiff interprets this email as confirming the intent of the defense team to rely on the absence to "TheUseful, LLC" as a named defendant as a basis for asserting a limitation defense to the

amended complaint.” DE 526 at p. 2. WAUSA requests leave to file its surreply to clarify the true meaning of the attached email.

II. WAUSA’S MOTION MEETS BOTH THE LEGAL STANDARD AND THE INTEREST OF JUSTICE

Plaintiff did not mention the communication between counsel in its Motion to Correct Misnomer. DE 459. Under these circumstances, a surreply is warranted because WAUSA was deprived from its right to explain the true and not the speculative meaning of counsel’s statement in its Opposition. Specifically, the Court may grant leave to file a surreply when the moving party would be unable to contest matters presented to the Court for the first time in the opposing party’s reply. *Khoury v. Meserve*, 268 F. Supp. 2d 600, 605 (D. Md. 2003); L.R. 105(2)(a) (“Unless otherwise ordered by the Court, surreply memoranda are not permitted to be filed”).

In the interests of justice, WAUSA should be permitted to file a surreply to address the newly attached alleged evidence in support of the Motion that was not originally filed with the Motion to Correct Misnomer. *See, e.g., Barrera v. Getty*, Case No. PJM 08-3347, 2009 WL 2499381, at *1, *1 (D. Md. Aug. 13, 2009) (Messitte, J.) (granting motion to file surreply). Further, a Surreply is most appropriate where the new matter introduced is factual, as it is here. *Cf. Alexander v. FBI*, 186 F.R.D. 71, 74 (D.D.C. 1998); *United States ex. rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.*, 238 F. Supp. 2d 270, 276-77 (D.D.C. 2002) (holding that a surreply may be filed by leave of Court when there is need to address matters raised in a reply to which a party would otherwise be unable to respond).

III. CONCLUSION

WAUSA’s Motion for Leave to File surreply both meets the applicable legal standard and the Court would benefit from a fully informed and accurate written briefing before rendering a decision. The proposed surreply is attached to this motion as Exhibit 1. WAUSA’s counsel has

conferred with counsel for Plaintiff, and counsel for Plaintiff has indicated that he opposes the relief set forth herein.

WHEREFORE, WORLD AVENUE USA, LLC respectfully requests leave of Court to file the surreply of record.

Dated: November 26, 2010

Respectfully submitted,

Attorneys for World Avenue USA, LLC

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